

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 Enhanced Behavioral Supports Homes

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on April 19, 2017, at the following address:

Office Building # 8
744 P Street Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on April 19, 2017.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.cdss.ca.gov/inforesources/CDSS-Regulations-Home-Page>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development
California Department of Social Services
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CHAPTERS

Title 22, Division 6, Chapter 1 (General Licensing Requirements), Sections 80001 (Definitions), 80020 (Fire Clearance), 80022 (Plan of Operation), 80028 (Capacity Determination), 80065 (Personnel Requirements), 80068 (Admission Agreements), 80070 (Clients Records), 80072 (Personal Rights), and 80087 (Building and Grounds); Chapter 6 (Adult Residential Facilities), Sections 85000 (General) and 85068.2 (Needs and Services Plan); Subchapter 1 (Emergency Intervention), Sections 85300 (General Provisions), 85301 (Definitions), 85302 (Emergency Intervention Prohibitions), 85322 (Emergency Intervention Plan), 85361 (Emergency Intervention Documentation and Reporting Requirements), 85365 (Emergency Intervention Staff Training), 85368 (Admission Agreements), 85368.2 (Needs and Services Plan), 85368.3 Manual Restraint or Seclusion Review), 85369 (Medical Examination), and 85375 (Seclusion Room); Chapter 11 (Enhanced Behavioral Supports Homes), Sections 89900 (General Provisions), 89901 (Definitions), 89918 (Application for Licensure), 89920 (Fire Clearance), 89922 (Plan of Operation), 89940 (Denial of Initial License), 89942 (Revocation or Suspension of a License), 89964 (Administrator Certification and Qualifications), 89965 (Personnel Requirements), 89968.1 (Intake Admission Procedures), 89968.2 (Needs and Services Plan), 89970 (Client Records), 89987 (Buildings and Grounds), and 89990 (Provisions for Emergency Intervention).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current statutes and regulations establish the provisions necessary for CDSS licensure and oversight of Adult Residential Facilities and Group Homes, as well as for the care and protection of the individuals who live in those facilities. The regulations in this package involve three primary areas where the CDSS will now license and enforce several types of services for its clients: Enhanced Behavioral Supports Homes (EBSHs), Secured Perimeters, and Emergency Intervention. They are closely related because they will either automatically apply or are likely to generally apply to the expected increase in care for developmentally disabled individuals who are currently largely housed in the developmental centers operated under the California Department of Developmental Services (DDS). As discussed in the statement of reasons for the EBSHs, the new law creating those homes specifically assigned both CDSS and DDS crucial roles in overseeing, licensing and enforcing regulations for those individuals. Therefore those roles are not only intertwined between those two departments, but also closely related to the roles of potential use of Secured Perimeters and/or Emergency Intervention in those new facilities. For that reason, these are all closely related regulations and best assessed and promulgated as a whole, rather than various pieces. Since the new statutes call for emergency status for the EBSHs regulations, the additional crucial components regarding Secured Perimeters and Emergency Interventions have equal urgency and call for immediate promulgation. This is necessary in order to maintain immediate preservation of public peace, health and safety as well as the general welfare of the population that will be served by the EBSHs.

The CDSS has determined that the proposed EBSH regulations will affect Adult Residential Facilities and Group Homes. These regulations will be adopted to implement Senate Bill (SB) 856 (Chapter 30, Statutes of 2014) that established EBSH as a subcategory of Adult Residential Facilities and Group Homes, which requires certification by the DDS and licensure by the CDSS.

In order to ensure all the necessary provisions are established in Title 22 of the California Code of Regulations to successfully license the EBSH subcategory, the following provisions must also be included:

- Emergency intervention provisions as developed from SB 130 (Chapter 750, Statutes of 2003), which provide the requirements to establish regulations specific to the use of physical restraints and seclusions in Adult Residential Facilities.

- Secured perimeters provisions as developed from Assembly Bill (AB) 1472 (Chapter 25, Statutes of 2012), which authorize the installation of secured perimeters around Adult Residential Facilities and Group Homes that utilize delayed egress devices.

The Department considered other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area (Licensing of EBSHs), and therefore, the Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting SB 856, SB 130, AB 1462 and SB 82 (Chapter 23, Statutes of 2015), as well as with existing state regulations.

COST ESTIMATE

1. Costs or Savings to State Agencies: No fiscal impact exists.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: N/A
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists.
4. Federal Funding to State Agencies: No fiscal impact exists.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations only impact licensees that make the business decision to admit the clients which would require these regulatory provisions. There is no requirement for licensees to work with clients that present behavioral issues.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only the licensees that make the business decision to serve clients that present behavioral issues. There is no requirement for licensees to work with clients that present behavioral issues.

The provisions specific to the use of secured perimeters are focused on the client protections and the established fire clearance requirements that a Licensee must ensure in order to establish secured perimeters around a facility. In addition, the requirement of a Licensee obtaining Department approval for the secured perimeter is not a new process, but part of the same plan of operation process which is required already for all Licensees of community care facilities. Essentially, these provisions do not require a Licensee to build a secured perimeter around their facility and therefore there are no associated costs to the provisions established in this regulation package on secured perimeters.

The provisions specific to the use of emergency interventions also do not have an associated cost as the focus is on client protections, ensuring safe practices, requiring specific details in emergency intervention documentation and reports to the standard record keeping processes and training specific to emergency intervention. The training required for these regulations is already required for ARFs that serve developmentally disabled clients per Section 4684.86 of the Welfare and Institutions Code. In addition,

the emergency intervention training provisions are a pre-existing requirement for all ARFs per Section 1180 of the Health and Safety Code. Essentially the proposed regulations on emergency intervention simply centralize and make more specific the existing requirements for ARFs into the Title 22 regulations, which create ease of use for the Department and the public, but do not create any new costs to Licensees who may choose to implement emergency intervention plans.

Lastly, for the provisions specific to Enhanced Behavioral Supports Homes, any new costs specific to this subcategory of ARFs are being covered by DDS as established in their Title 17, Section 59072 regulations on rates. Rates established by DDS will offset any increase in expenses a Licensee incurs as a result of operating an Enhanced Behavioral Supports Home. The provisions in these Title 22 regulations do not create any new cost outside of what has been created by the Title 17 regulations and therefore have no adverse economic impact on the businesses.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that the proposed regulations will affect Adult Residential Facilities and Group Homes, which the state considers small businesses. The regulations will be adopted to implement SB 856, specific to EBSH, SB 130 specific to emergency intervention, and AB 1472 specific to secured perimeters.

These regulations do not have an adverse economic impact on small businesses.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

No economic impact is anticipated for the CDSS or for Adult Residential Facility and Group Home licensees by this regulatory activity as determined by the economic impact assessment.

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. This regulatory action will help support the health and safety of clients in facilities and consistent with their assessments, will help them move to a less institutionalized living arrangement.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any other alternatives because the Legislature, through the above mentioned bills, mandate the Departments oversight of these facilities and no alternatives were proposed.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 1530, 1531.15, 1567.64 and 1567.82, Health and Safety Code; Sections 4684.80, 4684.81, 4684.82, 4684.83 and 4684.86, Welfare and Institutions Code. Subject regulations implement and make specific Sections 1180, 1180.1, 1180.2, 11810.3, 1180.4, 1180.5, 1501, 1502, 1507, 1509, 1530, 1531, 1531.15, 1562 and 1562.3, Health and Safety Code; Sections 4684.80, 4684.81, 4684.82, 4684.83 and 4684.86, Welfare and Institutions Code; Sections 2700, 2834 2838, 4996-4998.5 and 4980-4984.7, Business and Professions Code; Section 54342, California Code of Regulations, Title 17.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code section 11346.4.